

Notice of Allowability

Application No.

09/993,326

Examiner

Jon P Weber, Ph.D.

Applicant(s)

WANG ET AL.

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 29 September 2003.
2. ☒ The allowed claim(s) is/are 1-17 and 23-25.
3. ☒ The drawings filed on 14 November 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other _____ |

Jon P Weber, Ph.D.
Primary Examiner
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Status of the Claims

The response with amendments filed 29 September 2003 has been received and entered. Claims 1-17 and 23-25 have now been presented for examination.

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-17 and 23-25, in the Paper filed 29 September 2003 is acknowledged. Non-elected claims have been canceled.

Information Disclosure Statement

The Information Disclosure Statements filed 05 March 2002, 28 May 2002, and 28 October 2002 have been considered.

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance: The closest art is MacDonald et al. (15 June 2001), which was published after the priority date of 13 November 2000, Sasaki et al. (EP 635994) and Nishimura et al. (EP 556748).

MacDonald et al. (2001) disclose separating particles having low refractive index from particles having high refractive index relative to the medium in a two-dimensional interferometric trap. MacDonald et al. are silent about the dielectric constant of the two particles or the medium or that the dielectric constant of the medium is intermediate between the two particles.

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Sasaki et al. (EP 635994) disclose separating particles in a flow stream by a stripe pattern of radiation (scanning or interferometric) by means of differential braking forces on the particles based on 1) size, 2) refractive index, or 3) size and refractive index. Sasaki et al. (EP 635994) are silent about the dielectric constant of the two particles or the medium or that the dielectric constant of the medium is intermediate between the two particles.

Nishimura et al. (EP 556748) disclose separating particles in a medium by means of differential forces on the particles based on 1) size, 2) refractive index, or 3) size and refractive index. Nishimura et al. (EP 556748) are silent about the dielectric constant of the two particles or the medium or that the dielectric constant of the medium is intermediate between the two particles.

The concept of refractive index is close to but not the same as the concept of the dielectric constant. They are different and not clearly related properties.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

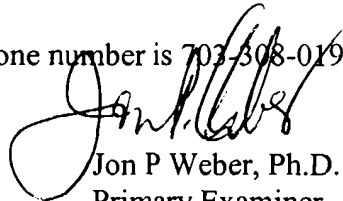
Claims 1-17 and 23-25 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon P Weber, Ph.D. whose telephone number is 703-308-4015. The examiner can normally be reached on daily, off 1st Fri, 9/5/4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 703-308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Jon P Weber, Ph.D.
Primary Examiner
Art Unit 1651

JPW
6 November 2003